STATE OF MICHIGAN

COURT OF APPEALS

MEYER CONSTRUCTION CO.,

Plaintiff-Appellant,

v

JOHN R. MEYER and THOMAS B. MEYER,

Defendants-Appellees.

UNPUBLISHED
February 7, 2003

No. 236437
Wexford Circuit Court
LC No. 99-015004-CK

Before: O'Connell, P.J., and Griffin and Markey, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10) (no genuine issue of material fact). We reverse and remand.

Plaintiff argues that the trial court erred in granting summary disposition in favor of defendants because a genuine issue of fact existed that plaintiff was equitably subrogated to the claims and rights of Robert W. Meyer, Jr. We agree. A trial court's grant of summary disposition is reviewed de novo on appeal. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). This Court must review the record in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law. *Id*. In reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), a trial court must consider the pleadings, affidavits, depositions, and other documentary evidence in the light most favorable to the party opposing the motion. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Further, the interpretation of contractual language is an issue of law that is reviewed de novo on appeal. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

In *Hartford Accident & Indemnity Co v Used Car Factory, Inc*, 461 Mich 210, 215; 600 NW2d 630 (1999), our Supreme Court discussed the concept of equitable subrogation:

> Equitable subrogation is a legal fiction through which a person who pays a debt for which another is primarily responsible is substituted or subrogated to all the rights and remedies of the other. It is well-established that the subrogee acquires no greater rights than those possessed by the subrogor, and that the subrogee may not be a "mere volunteer." . . . Equitable subrogation is a flexible,

> elastic doctrine of equity. . . . Its application "should and must proceed on the case-by-case analysis characteristic of equity jurisprudence." [Citations omitted.]

See, also, *In re Hales Estate*, 182 Mich App 55, 59; 451 NW2d 867 (1990) ("[s]ubrogation is an equitable doctrine which is applied when someone, not a volunteer, discharges a debt for which another person is primarily liable").

Plaintiff corporation first claims that a genuine issue of material fact existed regarding its claim of equitable subrogation because the 1986 agreement encompasses plaintiff corporation (as well as the individual defendants and their businesses) as being liable for environmental damages resulting from the Northernaire Property.[1] As previously stated, the trial court was required to examine all the evidence in the light most favorable to plaintiff, the nonmoving party. *Quinto, supra.* Thus, the court was required to determine whether the evidence in any way supported plaintiff's position that it was obligated to indemnify Robert Meyer, Jr., its corporate officer, director, and employee, for alleged conduct (i.e., installing the second sewer line) arising from the Northernaire litigation. Our review of the record convinces us the trial court clearly erred in determining that the evidence when viewed in a light most favorable to plaintiff did not create a genuine issue of material fact. The evidence certainly supports plaintiff's claim that it was not merely a volunteer when it made indemnification on behalf of Robert Meyer, Jr. Indeed, it is apparent that plaintiff acted in fulfillment of the parties' 1986 agreement and is now simply seeking that defendants do likewise.

The 1986 separation agreement provides:

> 12. Outstanding Liability for Personal Injury or Property Damage. All liability with respect to personal injury which has occurred prior to the date of transfer in connection with the business operation at Caberfae Ski Area or as part of the business operation of Meyer Construction Company, and any environmental damage or liability of Meyer Construction Company, R. W. Meyer, Inc., or Jack, Tim and Bob, with respect to the Northernaire property, shall be borne equally by all three parties, individually, and their businesses and/or corporate entities. Such liability shall be secondary to any insurance coverage which may be available for the particular injury or damage claimed.

Although defendants argue that plaintiff corporation was not a party to the 1986 agreement and is therefore not bound to perform any duty under the agreement, we disagree. Clearly, the agreement provided that plaintiff corporation would assist in paying any damages with respect to the Northernaire property. With respect to any environmental damage or liability

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[1] Although defendants stated that plaintiff failed to raise and preserve the issue that the 1986 separation agreement required it to pay Robert Meyer, Jr.'s share of liability, we find otherwise because the 1986 agreement was a primary focus in the earlier litigation between instant defendants and Robert Meyer, Jr. (*Meyer v Meyer*, Wexford Circuit Court # 98-13587-CK, the agreement was raised in plaintiff's complaint in this matter, and the trial court considered and interpreted the 1986 agreement when considering plaintiff's equitable subrogation claim in the instant case.

resulting from the Northernaire property, the agreement plainly states that the liability shall be borne equally by all three parties, individually, and *their businesses and/or corporate entities*. Contractual language is construed according to its plain meaning. *Dillon v DeNooyer Chevrolet Geo*, 217 Mich App 163, 166; 550 NW2d 846 (1996).

Further, plaintiff corporation signed the agreement, thereby binding itself to the terms of the agreement, including the liability provision with respect to the Northernaire property. Thus, as plaintiff corporation accurately states, plaintiff corporation was placed in the position of acting as a guarantor on behalf of Robert Meyer, Jr., just as the other Meyer family businesses and corporate entities who were signatories to the 1986 agreement agreed to equally share in the payment. As a result of the 1986 agreement, plaintiff corporation was not a "mere volunteer" when it paid Robert Meyer, Jr.'s $675,000 debt to the State of Michigan. *Hartford Accident, supra*. Accordingly, plaintiff corporation became subrogated to the rights of Meyer, Jr., so as to enforce Meyer, Jr.'s rights against instant defendants under the 1986 agreement. Viewing the evidence in plaintiff's favor, the naming of Meyer, Jr. in his individual capacity was sufficient under the 1986 agreement to trigger plaintiff corporation's potential liability. The trial court's focus on the issue of whether plaintiff corporation was a named party in the DNR litigation or whether it received a benefit in being released from liability from the lawsuit's settlement was irrelevant and misplaced for purposes of the equitable subrogation doctrine. The 1986 agreement created a sufficient basis to deny defendants' motion for summary disposition. In light of this finding, we need not consider plaintiff's alternative arguments regarding statutory law and the corporate bylaws.

We reverse the trial court's order granting summary disposition in favor of defendants and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Richard Allen Griffin
/s/ Jane E. Markey